

ENVIRONMENTAL ASSESSMENT DECISION NOTICE

For the Bear and Pine Creek Water Right Acquisition and Permanent Conversion to Instream Flow

Montana Fish, Wildlife & Parks
Region 3, Bozeman
November 15, 2017

Proposed Action and Preface

Montana Fish, Wildlife & Parks (FWP) proposes to acquire two mining water rights and permanently change the water rights to instream flow to benefit the fishery. One water right is from Bear Creek, a tributary to the Yellowstone River near Gardiner, Montana and the other water right is from Pine Creek, a tributary to Bear Creek near Jardine, Montana.

Montana Fish, Wildlife & Parks (FWP) would accept the donation of two mining water rights owned by Trout Unlimited and apply to Montana Dept. of Natural Resources and Conservation (DNRC) to permanently change them to instream flow. While DNRC is the decision-maker with respect to the permanent change to instream flow, the Environmental Assessment includes an evaluation of the impacts of the permanent change to instream flow as that is FWP's objective. The water rights involved are Statements of Claim 43B 194641-00 from Bear Creek and 43B 134019-00 from Pine Creek.

The water rights were historically used for mining and ore processing operations as well as electric power generation for the operations. Most recently the water rights have been used for reclamation of the mine site. Changing the water rights to instream flow would protect the flow in the ¼ mile of Pine Creek and 3¾ miles of Bear Creek where flow was historically reduced due to diversion pursuant to the water rights.

The permanent change to instream flow is expected to benefit the fishery of Bear Creek and the Yellowstone River. Like other tributaries of the upper Yellowstone River, Bear Creek provides important spawning and rearing habitat for Yellowstone cutthroat trout and rainbow trout migrating from the Yellowstone River. Further, Bear Creek is a source of cool water that helps moderate elevated water temperatures in the Yellowstone River. To permanently change the water rights to instream flow, FWP must file an application and receive authorization from DNRC.

Public Process and Comments

FWP is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of a proposed action to the human and physical environment. In compliance with MEPA, an Environmental Assessment (EA) was completed for the proposed project by FWP and released for public comment on October 4, 2017.

Public comments on the proposed action were taken for 30 days (through November 3, 2017). Legal notices were printed in the *Bozeman Daily Chronicle* and the *Livingston Enterprise*. The EA was also

posted on the FWP webpage at:

<http://fwp.mt.gov/news/publicNotices/environmentalAssessments/acquisitionsTradesAndLeases/?cpn>

One party submitted a comment in support of the proposed action.

Final Environmental Assessment

The Draft Environmental Assessment, together with this Decision Notice, will serve as the final document for this proposal.

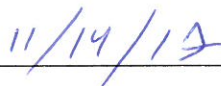
Decision

Based on the Environmental Assessment and public comment, it is my decision to approve the proposed action for acquiring the Bear and Pine Creek water rights and submitting an application to permanently change them to instream flow, pending Fish and Wildlife Commission approval.

I find there to be no significant impacts on the human and physical environments associated with this project. Therefore, I conclude that the Environmental Assessment is the appropriate level of analysis, and that an Environmental Impact Statement is not required.



Quentin Kujala
Region 3 Acting Supervisor
Montana Fish, Wildlife & Parks



Date